THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.24132 OF 2000

DATED 16th March, 2006

BETWEEN

Smt.V.Saralamma w/o Lakshmikantha Rao and another

… Petitioners

and

The Joint Collector, West Godavari District, Eluru and others.

… Respondents

THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.24132 OF 2000

ORDER:

This writ petition is filed impugning the proceedings, dated 26.10.2000, of the Joint Collector, West Godavari, whereby and whereunder, the assignment made in favour of one Gudimetla Kesavulu of Endapalli village in respect of the land admeasuring Acs.2.29 in R.S.No.886/11 was cancelled and a further direction was issued to assign the same in favour of the fourth respondent.

The case of the petitioners, in brief, is as follows. The Tahsildar of Chintalapudi granted D Form patta in respect of subject land by proceedings, dated 01.03.1962, treating him as landless poor person. The fourth respondent and thirty others of the village filed a petition objecting the assignment. They alleged that the land in

R.S.No.886/11 (mentioned as 88/11 in the writ petition) was in their possession, that they and their predecessors were in possession of the land for more than 55 years, that they are cultivating the land by raising dry crops and that the land was assigned to Gudimetla Kesavulu, who was never in possession of the land. They also alleged that Gudimetla Satyanarayana, the Village Musif of Endapalli got the land assigned in favour of Gudimetla Kesavulu ignoring the claims of the fourth respondent and others. The petitioners further alleged that after death of Gudimetla Kesavulu, his wife and daughter were enjoying the land. The first petitioner's husband is brother of Rajamma, wife of Gudimetla Kesavulu. Be that as it is, the petitioners filed O.S.No.116 of 1985 against the fourth respondent for perpetual injunction and delivery of possession. The same was dismissed. They filed A.S.No.146 of 1992, which was also dismissed. Again the first petitioner filed O.S.No.77 of 1993 for perpetual injunction, which was decreed on 30.09.1996. Assailing the same, the fourth respondent filed A.S.No.7 of 1997, which is pending. While appeal was pending, the fourth respondent made an application for cancellation of D Form patta. As directed, the Mandal Revenue Officer, the third respondent herein, conducted enquiry and submitted a report to the first respondent for cancellation of patta, who by impugned order cancelled the patta. The petitioners contend that the fourth respondent was never in possession of the land and that he is not a landless poor person. They further contend that the Joint Collector passed orders without hearing the petitioners and therefore the same is unsustainable.

The matter was admitted on 07.12.2000 and this Court passed interim orders staying the eviction of the petitioners from the land in R.S.No.886/11. The respondents have not filed any counter affidavit. Be that as it is, the learned District Judge, West Godavari, addressed a letter to the Registrar (Judicial) seeking clarification whether the order of the stay granted by this Court on 07.12.2000 is applicable to the proceedings in A.S.No.7 of 1997 pending on its file. Therefore, the matter was posted for orders of the Court. On 03.03.2006, at this stage itself, with the consent of parties, the matter was heard finally. Though the counter affidavit is not filed, the learned Assistant Government Pleader for Revenue (Assignment) has produced the original file and made his submissions.

Learned counsel for the petitioners submits that the Mandal Revenue Officer did not give any notice to the petitioners while conducting enquiry as directed by the Joint Collector and therefore the impugned order which is based on the report of the Mandal Revenue Officer is illegal. He secondly submits that the Joint collector has not issued any notice to the counsel for the petitioners and therefore the same is violative of principles of natural justice. He also submits that Gudimetla Kesavulu brought the land into cultivation, and after his death, the husband of the first petitioner and the brother of Gudimetla Kesavulu, the second petitioner, continuously enjoyed the property and therefore the assignment in favour of Gudimetla Kesavulu cannot be treated as benami. These contentions are refuted by the learned Assistant Government Pleader.

The fourth respondent herein filed revision petition before the Joint Collector against the assignment of land in favour of Gudimetla Kesavulu. The report of the Mandal Revenue Officer was called for. He conducted enquiry and submitted a report on

03.03.1994. After verifying the records, the Mandal Revenue Officer found that the land in R.S.No.886/11 was under the occupation of Narasumpati Samuel (Acs.0.33), Barre Balasundaram (Acs.0.83) and Barre Peda Yesu (Acs.1.33). During the enquiry, it was found that the father of the fourth respondent, Barre Samuel occupied the land thirty six years ago and put the land under cultivation and after his death, Bala Sundaram and Peda Yesu came into possession and enjoyed the land. However, the land was assigned by Tahsildar in 1962 to Gudimetla Kesavulu and that the erstwhile Munsif Gudimetla Satyanarayana obtained benami patta in favour of his relatives. Gudimetla Kesavulu was found to be none other than the co-son-in-law and cousin of Gudimetla Satyanarayana, the Village Munsif. Gudimetla Kesavulu and his family members never cultivated the land and never resided in Endapalli village and that Gudimetla Kesavulu was resident of Dammapet village of Madira Taluk in Khammam District. Therefore, he submitted that the assignment in favour of Gudimetla Kesavulu be cancelled and re-assign the same to eligible Sivaijamadars. The Joint Collector then issued notices to Gudimetla Rajamma, W/o Gudimetla Kesavulu, through her advocate and notice to the counsel for the fourth respondent. When the case was heard by the Joint Collector, the counsel for Rajamma or Vajrapu Saralamma (the first petitioner herein) was absent. The petitioners are also absent and therefore taking into consideration the record, the Joint Collector passed orders cancelling the assignment in favour of Gudimetla Kesavulu.

The petitioners contend that since 1962 Gudimetla Kesavulu cultivated the land and he was in possession. No evidence to that effect is placed before this Court. The Mandal Revenue Officer after enquiry found that Gudimetla Kesavulu was resident of Dammapet village and assignment was obtained in his name benami by his co-son-in-law, Gudimetla Satyanarayana. Such an assignment in favour of the person, who is not in occupation and who is not a resident of the village, where the land is situated is *ex facie* illegal as per Board Standing Order 15. When assignment is obtained by fraud and misrepresentation, it is always open to the Joint Collector to cancel the same. The submission that no notice is issued to the petitioners is belied by a reference to the record placed before this Court, which shows that a notice was issued by the Joint Collector but the first petitioner or her counsel did not appear before the Joint Collector. The questions raised in this writ petition are purely questions of fact and therefore they cannot be adjudicated in this writ petition.

For the above reasons, the writ petition fails and is accordingly dismissed. No costs.

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(V.V.S.RAO,J)

.03.2006.

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